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No. 89-322

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,

Petitioner,

v.

THARON RAWSON, Individually and as Guardian Ad Litem for SETH RAWSON and CINDY RAWSON; BERNIECE JOHNSON, Individually and as Guardian Ad Litem for MICHAEL WAYNE JOHNSON, RUTH ELLEN JOHNSON and JOHN RUSSEL JOHNSON; LAURA DUNBAR, as Guardian Ad Litem for RICKINA ROSSITER and GLEN ROSSITER, JR.; and MARY WOOD, as Guardian Ad Litem for LESLIE D. WOOD, *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Court of Idaho

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

1. Does the federal duty of fair representation preempt a state negligence action that challenges a union's performance in administering the safety article of a collective bargaining agreement?

2. Under the principles of contract interpretation applicable pursuant to § 301 of the Labor Management Relations Act, did the union in the collective bargaining agreement at issue here assume a duty to the bargaining unit employees to conduct inspections of the mine?

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BRIEF FOR PETITIONER

This brief is the joint product of the petitioner, United Steelworkers of America, AFL-CIO-CLC ("the union"), and the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"). The AFL-CIO shares with the petitioner a belief that the Supreme Court of Idaho erred in holding that state law tort principles may be applied to judge the adequacy of the union's performance in representing employees in its bargaining unit on matters related to the safety of the workplace. The decision of petitioner and the AFL-CIO to file a single brief reflects the identity of their views on the legal issues presented and their desire to minimize

the burden on the Court by stating their common position only once.

OPINIONS AND JUDGMENTS BELOW

The opinion and judgment of the Idaho Supreme Court that is being reviewed is reported at 115 Idaho 785, 770 P.2d 794, and is reproduced as Petition Appendix A (Pet. App. 1a-13a).[1]

JURISDICTION

This court has jurisdiction to review the judgment below by certiorari pursuant to 28 U.S.C. § 1257(a). The federal questions presented in this petition were properly raised and were decided by both the trial court

[1] There are a number of pertinent earlier opinions that have been issued in the seventeen-year history of this case, and each is reproduced in the Petition Appendix:

—The Idaho trial court's opinion of January 29, 1976, granting the union's first motion for summary judgment (Pet. App. 161a-164a). It is unreported.

—The Idaho Supreme Court's opinion of September 13, 1979, reversing the judgment in favor of the union and remanding for further proceedings (*id.* 107a-160a). It is reported at 100 Idaho 523, 620 P.2d 21.

—The Idaho trial court's opinion of November 1, 1983, granting the union's second motion for summary judgment (Pet. App. 89a-106a). It is unreported.

—The Idaho Supreme Court's opinion of February 24, 1986, affirming that summary judgment (*id.* 49a-88a). This opinion was subsequently withdrawn and is unreported.

—The Idaho Supreme Court's opinion and judgment, issued on rehearing September 4, 1986, reversing the summary judgment (*id.* 13a-48a). It is reported at 111 Idaho 630, 736 P.2d 742. This Court vacated that judgment on the union's petition for certiorari (No. 86-908) and remanded for further consideration in light of *Electrical Workers v. Hechler*, 481 U.S. 851 (1987). *See* 482 U.S. 901 (1987).

and the Idaho Supreme Court (Pet. App. 3a-8a, 30a-36a, 101a-106a).

The opinion and judgment of the Supreme Court of Idaho were issued on December 22, 1988. A timely petition for rehearing was denied on April 19, 1989 (*id.* 165a-166a). On July 12, 1989, Justice O'Connor entered an order extending the time for filing a petition for certiorari to August 17, 1989 (*id.* 167a), and on August 9, 1989, Justice O'Connor entered an order further extending the time for filing a petition for certiorari to August 24, 1989 (*id.* 168a). The petition for certiorari was filed August 24, 1989, and was granted January 8, 1990.

STATUTORY PROVISIONS INVOLVED

Section 9(a) of the National Labor Relations Act of 1935, as amended ("NLRA"), 29 U.S.C. § 159(a), provides in pertinent part:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment . . . .

Section 301(a) of the Labor Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C. § 185(a), provides in pertinent part:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

The Sunshine Mining Company operates a silver mine in Kellogg, Idaho, known as the Sunshine Mine. The United Steelworkers of America, AFL-CIO-CLC ("the union") is the exclusive bargaining representative of miners working in that mine.[2]

Article IX of the collective bargaining agreement between the company and the union covers the subject of "Safety and Health." No other provision of the agreement addresses that subject.

Article IX, at all relevant times (J.A. 20-22), began by defining the employer's responsibility for the safety and health of its employees: "The Company shall continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment" (*id.* 20). Article IX went on to provide for a safety committee composed of six members, three designated by the employer and three designated by the union.

The agreement stated that the safety committee's authority was to submit "advices," "suggestions [and] recommendations" to the plant manager "for his consideration and for such action as he may consider consistent with the Company's responsibility to provide for the safety and health of its employees . . ." (*id.* 21-22); nothing in the agreement empowered the committee to take any corrective action. On these matters, the union had recourse to the agreement's grievance procedure if and only if a majority of the "entire" safety committee

[2] The trial court disposed of this case on a motion for summary judgment. The Idaho rules of procedure define the grounds for summary judgment in terms identical to Rule 56 of the Federal Rules of Civil Procedure. This statement of the case therefore summarizes the *undisputed* facts that were presented to the trial court for the decision on that motion.

(necessarily including at least one management member) had concurred in a recommendation with respect to a condition that "need[ed] action immediately" and that recommendation had not been carried out (*id.* 22. *See also id.* 93-94).

A union member of the committee was permitted to "accompany" the state mine inspector on any state inspection made at the property (*id.* 22). The union was also permitted to designate a representative to "accompany" the company's safety engineer once each month on "a tour of a section of the mine" (*id.*).

Pursuant to these provisions of the collective bargaining agreement, the union appointed three rank-and-file members—employees of the company—to serve on the joint safety committee along with representatives named by the company (*id.* at 179-180). The local union president testified that he did not expect rank-and-file miners to be able to "make investigations to determine what conditions in the mine might be unsafe or dangerous"; instead, he expected them to "represent the employees for bitches about safety" (*id.* 36-37. *See also* id. 98-99, 103, 179-180). As the agreement authorized, a union representative regularly accompanied the state mine inspector when he came to the mine to make the inspections that were mandated by Idaho law (*id.* 30, 36). One of the union representatives also accompanied the company's safety engineer each month on a tour of a section of the mine that the safety engineer designated (*id.* 34-36, 41, 215). The safety committee met regularly, as the contract provided, to discuss what had occurred on these tours and to offer suggestions about safety concerns (*id.* 36, 200-202, 205).

The local union president testified that "[t]he function of the Safety Committee was to convey employees' concerns to the company" (*id.* 104). To that end, the union's representatives on the committee were available to the employees to receive complaints and take them up with

management in the committee's meetings or between meetings (*id.* 95-104, 119, 208-210, 212-216).[3] Sunshine's management always reserved its right to decide whether to adopt the union representatives' suggestions, and cost was a major factor in its decisions (*id.* 39, 200-206).

On May 2, 1972, a major fire occurred underground in the Sunshine Mine. Ninety-one miners died from asphyxiation or carbon monoxide poisoning. After a thorough investigation, the United States Bureau of Mines could not make a definitive determination about the cause of the fire, but concluded that the most likely cause was spontaneous combustion of timbers and debris in an area that had long before been worked out and walled off from the rest of the mine.

The families of the deceased miners collected worker's compensation payments from the company under Idaho law. A number of the families then filed suit seeking damages from various third parties, including the United States Bureau of Mines and the manufacturers of certain materials and equipment that had been used in the mine. *See House v. Mine Safety Appliances Co.*, 573 F.2d 609 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978). Four of the miners' families filed another suit against the union in the state courts of Idaho, thus initiating the proceeding that is the subject of this petition.[4]

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[3] Other union officials, such as the local union president, also regularly discussed safety concerns with management (J.A. 92-93, 100-103).

[4] The four plaintiffs, all widows of deceased miners or guardians of minor children of deceased miners, sued variously in their individual capacities and on behalf of the children. The capacity in which each plaintiff sued is identified in the caption.

These families also sued the State of Idaho in this case under the Idaho Tort Claims Act, alleging that the state's mine inspectors had negligently failed to identify the hazards that caused the fire and contributed to the deaths of the miners. Those claims were dismissed in earlier proceedings in this case (Pet. App. 117a-154a).

The sole basis for plaintiffs' claims against the union was alleged negligence in administering and enforcing the safety article of the collective bargaining agreement.[5] The complaint alleged that the union "owed the Plaintiffs' decedents the duty of due care under Idaho law" (J.A. 53). Then, in specific terms, the complaint alleged that the union

> undertook to act as accident prevention representative and enforcer of the Company-Union agreement and did it negligently, to wit:
>
> A. It misrepresented its safety concern and expertise to the rank and file.[6]
>
> B. It failed to develop adequate program for its union representatives.
>
> C. It undertook to provide representatives who inspected and pretended to enforce the contractual accident prevention clauses, and did so negligently, to wit:
>
> (1) It failed to require mine evacuation on first evidence of smoke underground;
>
> (2) It failed to require fire drills;
>
> (3) It failed to require personal protective equipment;
>
> (4) It failed to require adequate protection against spontaneous combustion of discarded timbers underground;

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[5] The original complaint alleged only a negligence claim; plaintiffs subsequently amended their complaint to assert a fraud claim as well, based on allegations that the union had falsely represented that it possessed expertise on safety matters and had thus lulled the miners into reliance on its safety "inspections." (J.A. 63-68). That claim was dismissed on grounds of state law. (Pet. App. 8a-9a, 16a-18a).

[6] The Idaho courts dismissed on state-law grounds the misrepresentation part of this claim, along with the plaintiffs' fraud claim. *See* note 5, *supra*.

(5) It failed to require adequate emergency egress from the mine.[7]

At an early stage of the proceedings, the union moved for dismissal or summary judgment on federal preemption grounds. In 1976 the Idaho trial court granted the motion for summary judgment (Pet. App. 164a). The court ruled that plaintiffs' claims were based entirely on alleged inadequacy in the union's performance as bargaining representative and that the federal duty of fair representation exclusively defined the terms on which a union could be held liable in that capacity. Accordingly, the trial court concluded that the union could not be held liable under state law negligence theories and dismissed the complaint (*id.* 163a-164a).

On appeal, the Supreme Court of Idaho reversed, holding that the duty of fair representation does not preempt state tort law (id. 108a-114a). A "special concurrence" (joined by three members of the five-member court) stated that "the precise nature of the legal issues raised by the appellants' wrongful death action is not entirely clear at the present procedural posture of the case," and "a final decision whether the wrongful death action against the respondent union is preempted by federal labor laws must therefore await a full factual development of the legal issues raised under our state tort law" (*id.* 155a-156a).[8] The union's petition for certiorari from that decision was denied. *United Steelworkers of America v. Dunbar*, 446 U.S. 983 (1980).

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[7] Complaint at 3-4. When plaintiffs subsequently amended their complaint, see note 5, *supra*, they restated these allegations in almost identical terms (J.A. 53-54).

[8] The Idaho Supreme Court's opinion is reproduced in full as Petition Appendix E. Most of that lengthy opinion is devoted to plaintiffs' claims against the State of Idaho. The portion of the majority opinion that addresses the claims against the union and the special concurring opinion on union liability appear at Pet. App. 109a-116a and 155a-156a, respectively.

On remand, after completion of extensive discovery in the trial court, the union again moved for summary judgment, arguing that on the undisputed facts, whether Idaho tort law or federal labor law governed, there was no ground for union liability. In 1983 the trial court granted that motion, holding that under Idaho tort law the union did not owe a duty of due care to employees on the matters alleged in the complaint (Pet. App. 97a-100a). As an alternative ground for decision, the trial court ruled that the Idaho claim was preempted by federal law because the summary judgment record made it clear that plaintiffs' negligence claims against the union were based solely on the union's "representational duties" and "the manner in which the Union carried out the collective bargaining agreement, [with plaintiffs] essentially saying the Union advisory committee should have done more" (*id.* 103a-104a).

On appeal, the Idaho Supreme Court reversed the district court's decision, once again reinstating plaintiffs' negligence claims (*id.* 15a-16a).[9]

First, in addressing the Idaho tort law issues, the Idaho Supreme Court observed that the basis for plaintiffs' assertion of a union duty was an allegation of negligence in the performance of safety functions that the union had undertaken pursuant to contract (*id.* 22a-23a). As to the source of the undertaking, the Idaho court stated that "[t]he Collective Bargaining Agreement provided for the Union's safety inspection function . . ." (*id.* 22a). The court quoted the entire safety article (*id.* 24a-28a). The Idaho court characterized the safety article of the contract as providing for union "inspections" of the mine and held that the union was under a duty to exercise due care when it performed that function:

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[9] The Idaho Supreme Court initially affirmed the trial court's judgment of dismissal on principles of Idaho tort law, without reaching the issue of federal preemption (*id.* 49a-55a). Plaintiffs then petitioned for rehearing, and the Idaho Supreme Court rendered the decision described in the text that follows.

> Because the Union, pursuant to the provisions of the collective bargaining agreement, had contracted to inspect and *in fact, inspected* the mine, it owed the (minimal) duty to its members to exercise due care in inspecting and in reporting the findings of its inspection. [*Id.* 29a, emphasis and parentheses in original].

Second, the Idaho court held that plaintiffs' tort claims were not preempted by federal labor law. The court rejected the union's argument that the federal duty of fair representation exclusively defines the grounds upon which a union can be held liable for its performance as bargaining representative (*id.* 30a-31a). Then the Idaho court rejected the union's argument that federal law in any event must govern the interpretation of the collective bargaining agreement, under this Court's decision in *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985). The Idaho court distinguished *Allis-Chalmers*, saying: "[I]n the instant case, the provisions of the collective bargaining agreement do not require interpretation, as was the case in *Allis-Chalmers*, *supra*, but rather *the provisions determine only the nature and scope of the Union's duty*" (Pet. App. 33a; emphasis added).

In concluding that federal law does not preempt plaintiffs' claims, the Idaho court relied heavily on the decision of the Eleventh Circuit which this Court later reversed in *Electrical Workers v. Hechler*, 481 U.S. 851 (1987). The Idaho Supreme Court quoted extensively from the Eleventh Circuit's *Hechler* opinion and stated that that opinion "correctly analyzed the non-applicability of the preemption doctrine to cases of this nature" (Pet. App. 34a), and concluded: "We agree with the *Hechler* analysis" (*id.* 36a).

The union petitioned for certiorari while *Hechler* was pending in this Court. After reversing the Eleventh Circuit's ruling in *Hechler*, this Court granted the union's petition, vacated the Idaho Supreme Court's judgment,

and remanded "for further consideration in light of" *Hechler*. 482 U.S. 901 (1987).

On remand, the Idaho Supreme Court "adhere[d] to [its prior] opinion as written" (Pet. App. 8a). However, that court no longer acknowledged, as it had prior to *Hechler*, that "the nature and scope of the Union's duty" were defined by the collective bargaining agreement (*id.* 33a). Instead, the Court changed its focus and held that the duty was not founded on the collective bargaining agreement but on what the union actually was doing:

> In the instant case we are not faced with looking at the Collective Bargaining Agreement to determine whether it imposes some new duty upon the union—rather it is conceded the union undertook to inspect and, thus, the issue is solely whether that inspection was negligently performed under traditional Idaho tort law.
>
> • • • •
>
> In the instant case there is no need to look to the agreement to discern whether it placed an "implied duty" on the union or whether the duty "extended to the particular responsibilities alleged" because here the parties concede the union did actively undertake the subject inspection duties. [Pet. App. 5a-6a. *See also* 4a, 6a-8a].

Two justices dissented. Justice Bakes concluded that the duty of fair representation was "the only duty which the union owed to its members" in "pursuing the members' rights under the collective bargaining agreement to correct unsafe working conditions in the mine" (*id.* 11a). In reaching that conclusion he took strong issue with the majority's conclusory statement that the union had "conceded" that it undertook to inspect the mine:

> The union has never conceded that it undertook to inspect the Sunshine Mine. The Court's opinion does

not point to any pleading or any evidence in the record to sustain either its factual conclusion that the union undertook to inspect the mine, or its statement that the union has "conceded" that it undertook to inspect. There is absolutely nothing to support either of those two statements. [*Id.* 10a].

The other dissenter, Justice Johnson, concluded that *Hechler* "requires us to hold that there is pre-emption" (*id.* 11a).

> Except for any duty imposed by the collective bargaining agreement, the Union had no duty for the safety of its members. The existence of this duty and its nature and scope are dependent on the meaning of the collective bargaining agreement. In *Rawson I* this Court said that "the provisions of the collective bargaining agreement . . . determine . . . the nature and scope of the Union's duty." [111 Idaho] at 640, 726 P.2d at 752 [Pet. App. 33a]. I agree and for this reason would hold that *Hechler* applied.
>
> * * * *
>
> Here, I am unable to see how a court could ascertain the duty of the Union without determining the meaning of the collective bargaining agreement. This would require the interpretation or construction of the collective bargaining agreement. [*Id.* 12a].[10]

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[10] Although the judgment of the Idaho Supreme Court contemplates further proceedings in the trial court, it is final within the meaning of 28 U.S.C. § 1257(a) because "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482-483 (1975). *See also id.* at 485-486; *Hudson Distributors, Inc. v. Eli Lilly & Co.*, 377 U.S. 386, 389 n.4 (1964). *See infra* at 25-27, 31.

SUMMARY OF ARGUMENT

I.

The union negotiated a collective bargaining provision giving it the right to "accompany" company and state inspectors on inspections of the mine, and subsequently exercised that right. The Supreme Court of Idaho ruled that solely by the exercise of that right the union assumed the affirmative duty "to exercise due care in *inspecting* the mine and in reporting the findings of its inspection" (Pet. App. 29a, emphasis added). The Idaho court was explicit that its ruling made the union answerable in tort for safety hazards that "could have been observed and should have been observed in the course of a reasonable inspection" (Pet. App. 28a). The issue here is whether a claim against the union based on that state law duty is preempted by the federal duty of fair representation.

In *Vaca v. Sipes*, 386 U.S. 171 (1967), this Court held that the federal duty of fair representation preempts the imposition of state law duties on a union's performance of representational functions in connection with the processing of grievances. For purposes of the preemptive effect of the duty of fair representation, the representational activity in this case stands on the same footing as the representational activity in *Vaca*.

Here the representational activity involves the administration of the contractual right to observe inspections and to make suggestions to the employer as to how to deal with matters that may affect safety. This activity is well within the area covered by the duty of fair representation. And the same reasons that require preemption as to union representational functions in administering the grievance article in a collective bargaining agreement apply to union representational functions in administering the safety article of such an agreement.

To impose state law duties on the union's performance of such functions would upset the "careful balance of individual and collective interests," *Electrical Workers v. Foust*, 442 U.S. 42, 48 (1979), that the federal duty of fair representation is designed to preserve. Such state law duties would narrow the "wide range of reasonableness" federal law accords to unions, *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953), by requiring unions to take certain actions or to meet a standard that is more demanding than the federal standard in performing representational functions, and thus would impinge upon the national labor policy.

When a federal law strikes a particular balance between competing interests, the states are not free to rebalance those interests if to do so would frustrate the federal objective. In this context, as in the *Vaca* context, the application of state tort duties to the union representational function would interfere with the collective bargaining process that Congress established. Accordingly, plaintiffs' state tort claims are preempted by the federal duty of fair representation.

II.

Section 301 of the LMRA governs the question whether the union in the safety article of the collective bargaining agreement assumed a duty to its members to inspect the mine. On its face the provision reads as an agreement by the company to a limited mechanism through which the union could raise safety issues on behalf of its members. And that reading is confirmed by reference to the policies and realities that form the context for assessing a collective bargaining agreement.

In negotiating a collective bargaining agreement, the union acts as the agent of the members of the bargaining unit and, as such, bargains to obtain commitments from the employer that run to the benefit of those employees. Ordinarily there is no occasion in a collective bargaining agreement for a union to make commitments to those on

whose behalf it is negotiating. There is nothing here which takes this safety provision out of the mainstream.

The office of "[c]ollective bargaining agreements [is to] regulate or restrict the exercise of management functions; they do not oust management from the performance of them." *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 583 (1960). The safety provision at issue here must be viewed in this light. The union sought to limit the company's prerogatives with respect to safety; the company yielded to the extent of providing for a limited forum for the union to bring employees' safety concerns to management's attention on an ongoing basis. That is the natural reading of the safety article, and that is the reading that results from an understanding of our system of labor relations.

ARGUMENT

I. THE DUTY OF FAIR REPRESENTATION ISSUE

The issue here is framed by the essentials of the relationship between an employer and a union in our collective bargaining system. The employer owns and operates the business. That being so, the employer, among other responsibilities, has a general duty to provide a safe workplace for the employees.[11] For its part, the union has the opportunity to persuade the employer, though discussion and the use of lawful economic weapons, to act in ways that improve workplace safety (as well as other terms and conditions of employment).

Here, the union played its role with respect to workplace safety by negotiating a contract clause providing, first, that a union member could "accompany" the company engineer or the state inspector on inspections of

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[11] *See Electrical Workers v. Hechler*, 481 U.S. 851, 859 (1987). The Idaho Supreme Court did not purport to place such a duty on the union here. In the words of that court, "we are not concerned with imposing a duty on the Union to provide a safe work place" (Pet. App. 4a).

the mine and, second, that safety "recommendations" to management could be made through a joint labor-management safety committee.

The union actively exercised these contractual rights. The Supreme Court of Idaho, in its most recent opinion—its opinion issued after this Court's decision in *Electrical Workers v. Hechler*, *supra*—ruled that solely by the act of "accompanying" company and state inspectors on inspections of the mine, the union assumed the affirmative duty "to exercise due care in *inspecting* the mine and in reporting the findings of its inspection" (Pet. App. 29a, emphasis added).[12] The Idaho court was explicit that its ruling made the union answerable in tort for safety hazards that "could have been observed and should have been observed in the course of a reasonable inspection" (Pet. App. 28a).[13] And the Idaho court held that the federal duty of fair representation does not preempt this state tort duty.

The issue thus raised concerns the source, and the substance, of the public law rules that govern the performance of a union that has the status of an exclusive bargaining representative under the National Labor Relations Act in carrying out a particular representational activity: *viz.*, administering a health and safety provision in a collective bargaining agreement.

In form, the question is whether only the federal duty of fair representation governs in this regard or whether both that duty and state tort law govern.

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[12] The quoted passage was taken from the Idaho Supreme Court's opinion in September 1986, prior to *Hechler*. As noted above, however, after *Hechler* the Idaho Supreme Court considered petitioners' arguments based on *Hechler* and announced: "We . . . adhere to our opinion as written " (Pet. App. 8a). Thus the pre-*Hechler* opinion and the post-*Hechler* opinion together constitute that court's explanation of its decision.

[13] *See* note 12, *supra*.

In substance, the question is whether the union's performance of its representational task is to be judged according to the standard repeatedly stated by this Court—"to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct," *Vaca v. Sipes*, 386 U.S. 171, 177 (1967)—or by the myriad of state formulations of the law of negligence. That is a question of substance because, as the decision of the Idaho court reflects, in any given state the general tort law may well place greater burdens and restrictions on a union's exercise of representational functions than those placed on a union by the federal duty of fair representation.

We show first that *Vaca v. Sipes*, *supra*, squarely decided the question posed here in favor of federal preemption of state law with regard to another aspect of union representational activity—the handling of contract grievances. We then show that *Vaca* states the correct preemption rule across the full breadth of a union's responsibilities in determining how to negotiate and administer collective bargaining agreements, including health and safety provisions in such agreements. And finally we show that in this case preemption of plaintiffs' state tort claims by the duty of fair representation is dispositive of those claims.

A. This Court's decision in *Vaca v. Sipes* leaves no room for the application of state law duties to judge the legal adequacy of a union's performance of its representational functions in the context of the grievance-arbitration process. In *Vaca*, the plaintiff brought a state law action against a union alleging that the union had wrongfully failed to take his discharge case to arbitration. The Court ruled that the plaintiff's claim was preempted by the federal duty of fair representation on the ground that in applying state law "the Supreme Court of Missouri . . . applied a standard that is inconsistent with governing principles of federal law with respect to

the Union's duty to an individual employee in its processing of grievances under the collective bargaining agreement." 386 U.S. at 189. Thus, as regards this aspect of a union's representational function, the federal duty governs, and the states are not free to impose some other duty. And, as we proceed to demonstrate, this preemption ruling of *Vaca* is equally applicable to the other aspects of a union's representational role.

B. 1. When employees exercise their NLRA right to be represented by an exclusive bargaining representative and to negotiate a collective bargaining agreement through that representative, the employees start from the following reality:

> Management hires and fires, pays and promotes, supervises and plans. All these are part of its function, and absent a collective bargaining agreement, it may be exercised freely except as limited by public law and by the willingness of employees to work under the particular, unilaterally imposed conditions. [*Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 583 (1960).]

The office of "[c]ollective bargaining agreements [is to] regulate or restrict the exercise of management functions; they do not oust management from the performance of them." *Id.* During the contract's term, the union monitors management's performance of its contractual commitments and generally attempts to assure that management abides by those commitments.

Normally the union performs that function by processing grievances that claim management violations of the contract through an agreed-on system for final resolution. That, of course, was the context in which *Vaca* arose.

But the contract may provide a lesser—but still useful—form of review and potential redress of management actions. As here, the agreement may expressly grant the union a means to advise management on how to exercise management functions but *not* grant a right to require

management to act in any particular way. That, as we have seen, *supra*, pp. 4-6, is the context in which this case arises: the union has been granted the right to observe inspections and a forum to make suggestions to the employer as to how to deal with matters that may affect safety.

The duty of fair representation is equally applicable to this form of union representational activity and to the representational activity at issue in *Vaca*. Earlier this Term, this Court reiterated that the duty of fair representation applies not only to the processing of grievances but to the full range of a union's activities in negotiating, administering and enforcing collective bargaining agreements. *Breininger v. Sheet Metal Workers Local 6*, —— U.S. ——, 110 S. Ct. 424, 437 (1989); *see also Electrical Workers v. Foust*, 442 U.S. 42, 46 (1979); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 564 (1976); *Humphrey v. Moore*, 375 U.S. 335, 342 (1964); *Conley v. Gibson*, 355 U.S. 41, 46 (1957).

Of particular pertinence here, the *Breininger* Court stated: "The key is that the union is administering a provision of the contract, something we have always held is subject to the duty of fair representation." 110 S. Ct. at 437. Accordingly, the duty of fair representation applies just as clearly to the representational activity here at issue as to that in *Vaca*.

From the earliest days of the NLRA, moreover, this Court has recognized that Congress in enacting the NLRA intended to occupy the field of labor relations in and affecting interstate commerce. Thus, the national labor policy has a powerful preemptive effect on state law. As the Court stated in its seminal opinion in *San Diego Unions v. Garmon*, 359 U.S. 236, 244 (1959):

> When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state

> jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law.

This basic labor law preemption rule has, of course, been refined in numerous ways in the ensuing years. But *Garmon*'s recognition that it is federal law that governs the essentials of the collective bargaining relationship--and that where there is a substantial likelihood that state law will limit peaceful conduct affirmatively protected by the NLRA or affirmatively left unregulated by the Act, the state law must give way—remains unchanged. *Machinists v. Wisconsin Emp. Rel. Comm'n*, 427 U.S. 132 (1976). And it is indisputable in this regard that the negotiation and administration of collective bargaining agreements is at the very heart of the federal enactment.

Thus, if there is any difference between *Vaca* and this case, it can only be that there are reasons for federal preemption in the grievance-arbitration context that are not at play in the present context where the union is administering a safety clause. We therefore turn to an inquiry as to whether that is so by examining the origin of, and the policies embodied in, the fair representation duty.

2. The collective bargaining system established by Congress is premised on the principle of collective action. A union chosen by a majority in an appropriate bargaining unit serves as the exclusive bargaining representative of all of the members of the bargaining unit. *E.g., Emporium Capwell Co. v. Western Addition Community Org.*, 420 U.S. 50, 61-62 (1975).

This Court has found the duty of fair representation to be implicit in the statutory scheme that establishes this system of collective representation. The duty serves to protect against *abuse* by unions of their position as exclusive representatives.

> The duty of fair representation exists because it is the policy of the National Labor Relations Act to allow a single labor organization to represent collectively the interests of all employees within a unit, thereby depriving individuals in the unit of the ability to bargain individually or to select a minority union as their representative. In such a system, if individual employees are not to be deprived of all effective means of protecting their own interests, it must be the duty of the representative organization "to serve the interest of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." [*DelCostello v. Teamsters*, 462 U.S. 151, 165 n.14 (1983), *quoting Vaca v. Sipes*, 386 U.S. at 182.]

Given the source of the fair representation duty, "[m]ost fair representation cases require great sensitivity to the tradeoffs between the interests of the bargaining unit as a whole and the rights of individuals." *Breininger v. Sheet Metal Workers Local 6*, 110 S.Ct. at 431. The duty of fair representation, in other words, strikes a "careful balance of individual and collective interests." *Electrical Workers v. Foust*, 442 U.S. at 48.

The collective interests that weigh in this balance are those guaranteed by § 7 of the NLRA: "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157.

These collective rights "are protected not for their own sake but as an instrument of the national labor policy of minimizing industrial strife 'by encouraging the practice and procedure of collective bargaining.'" *Emporium Capwell*, 420 U.S. at 62. In *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. at 180, the Court explained:

> National labor policy has been built on the premise that by pooling their economic strength and act-

> ing through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions. The policy therefore extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees. "Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents. . . ." *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 202. . . . "The majority-rule concept is today unquestionably at the center of our federal labor policy." [Footnotes omitted.]

Precisely because the duty of fair representation is derived from a "federal labor policy" in which the "majority rule concept is . . . unquestionably at the center," *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. at 180, the duty has been developed to take account of the inherently difficult choices that a democratically elected representative must make and the wide area of discretion that such a representative must have in making those choices—so long as that discretion is exercised with honesty of purpose.

This Court has thus repeatedly emphasized in applying the duty that "[a] wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). *See also, e.g., Electrical Workers v. Foust*, 442 U.S. at 48-52; *Vaca v. Sipes*, 386 U.S. at 190-195; *Humphrey v. Moore*, 375 U.S. at 349-350.

To introduce additional state law duties into this calculus necessarily would upset the "careful balance of individual and collective interests," *Electrical Workers v. Foust*, 442 U.S. at 48, that the federal duty of fair

representation is designed to preserve. State law requirements that cut back on the "wide range of reasonableness" protected by the federal law by requiring unions to take actions in carrying out their representational functions that federal law does not require—or to meet a standard that is different from the federal standard—would necessarily narrow the range of choices available to the collective representative and thus impinge upon the national labor policy.

Like other entities, a union must deploy finite resources to achieve an all but infinite number of objectives. And like other representative entities, a union must accommodate competing claims asserted by its constituents. Each union must make difficult choices as to the resources to be devoted to such varied goals as assuring that employees and retirees receive the health and retirement benefits to which they are entitled, eliminating racially discriminatory practices of the employer, eliminating health and safety hazards, assuring that promotions, transfers and layoffs are made on a fair and proper basis, and so on. Such choices must be made both in determining the union's negotiating goals and in determining the union's contract enforcement priorities.

As we have seen, the national labor policy provides that these choices are to be made through the union's democratic processes and are to stand so long as the process is not corrupted by invidious considerations and so long as the decision is not arbitrary. But the state law of torts does not rest on the considerations that inform the duty of fair representation and thus, not surprisingly, the state tort rules are quite different from the federal rules.

The instant case illustrates the point. The union here made the following choices in determining how to implement the contractual right the union had obtained "to accompany" the company engineer and state inspectors on tours and inspections of the mine: rather than at-

tempting to duplicate the expertise of the company and state inspectors, the union decided to use the presence of a union member on these inspections as a channel of communication through which employees would feel free to voice their safety-related concerns to the inspectors and to management. *See* pp. 5-6, *supra*.

The choices the union made are not the only possible ones but are certainly well within the "wide range of reasonableness" that federal law intends unions to exercise in setting and pursuing the employee group's priorities. Yet under the state tort standard articulated by the Supreme Court of Idaho, those choices as to how best to deploy the union's resources in the performance of representational functions could subject the union to liability for injuries suffered as a result of safety hazards in the employer's work place. Thus, according to the Idaho Court, solely because union representatives accompanied company and state mine inspectors on inspections of the mine, the union would be responsible for safety hazards that "could have been observed, and should have been observed, in the course of a reasonable inspection" (Pet. App. 28a); and that court defined a "reasonable inspection" as an inspection "conducted in a reasonable and prudent manner in accordance with recognized standards" (*id.* at 29a).

As a practical matter, the state tort duty as thus defined would deprive the union of the option it chose as to how best to use the contractual opportunity to "accompany" company and state inspectors on inspections of the mine. Faced with that tort duty, either the union would have to take the steps necessary to conduct its own inspections of the mine in accordance with the standards state law sets for conducting such inspections—which the contract does not grant the union the right to do—or the union would have to forgo any participation in the inspections; and the union would have to do so even though the union and its members regard that more limited participation in the inspection process to be more valuable

han not participating at all. *Compare Vaca v. Sipes*, 386 J.S. at 192-193.

When the federal law strikes a particular balance beween competing interests, the states are not free to e-balance those interests if to do so would frustrate the ederal objective. *Teamsters Union v. Morton*, 377 U.S. 52, 259-260 (1964); *Vaca v. Sipes*, 386 U.S. at 192-193; *Machinists v. Wisconsin Emp. Rel. Comm'n*, 427 U.S. 32, 145-147 (1976); *see also Motor Coach Employees . Lockridge*, 403 U.S. at 286. Here, as was true in the *Vaca* context, the application of state tort duties to the nion representational function—in this case, administering the collective bargaining agreement's safety article —would interfere with the collective bargaining process hat Congress established. Accordingly, such applications f state tort law must be preempted.

C. We have just shown that plaintiffs' state tort laims are preempted by the duty of fair representation. n the circumstances here, that showing is dispositive of hose claims.

Plaintiffs have never pleaded a breach of the federal uty of fair representation in this case. Even after a comlete round of appeals to the Supreme Court of Idaho in hich the union argued that plaintiffs' state law claims re preempted by the duty of fair representation, plaintiffs amended their complaint and asserted as the *sole* basis or their claim: "The Defendant owed the Plaintiffs' deedents the duty of due care under Idaho law" (J.A. 53). nd plaintiffs pleaded only the elements of a negligence laim under Idaho law (*id.* 53-54); plaintiffs did not plead he elements of a fair representation claim as defined by his Court. In all subsequent proceedings in the trial ourt and on appeal from the summary judgment that as granted to the union, plaintiffs have steadfastly dis-

claimed any reliance on the duty of fair representation as a possible basis for their claim.[14]

A claim based on the federal duty is also unavailable to plaintiffs for reasons that go beyond plaintiffs' failure to plead or pursue that claim. The record evidence that has been developed over the seventeen years this case has been in litigation provides no basis for a claim that the union breached the duty of fair representation.

"A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith." *Vaca v. Sipes*, 386 U.S. at 190. *See also Hines v. Anchor Motor Freight*, 424 U.S. at 564; *Breininger v. Sheet Metal Workers Local 6*, 110 S.Ct. at 436. The standard is meant to distinguish "between honest, mistaken conduct, on the one hand, and deliberate and severely hostile and irrational treatment, on the other . . . ." *Motor Coach Employees v. Lockridge*, 403 U.S. at 301.

In applying this standard, this Court has made clear that the duty of fair representation does not require a union to make full use of or to pursue all available avenues of relief established under a collective bargaining agreement, as long as the union is not improperly motivated. Most particularly, this Court has held that a union may, without violating the duty, refuse to file an employee's grievance—even a meritorious grievance—or refuse to take a grievance to arbitration. *Barrentine v.*

[14] For example, in their brief to the Idaho district court, plaintiffs said: "Plaintiffs, here, have alleged no breach of federal law. The claimed breach is of state law." Mem. in Opposition to Defendant's Motion for Summary Judgment, at 117-118 (Sept. 12, 1983). To the Idaho Supreme Court, on appeal, plaintiffs said: "The Appellants have never alleged that the Respondent Union breached its duty of fair representation, nor have the Appellants ever contended that federal law should apply." Appellants' Reply Brief in Idaho Supreme Court Case 15338, at 6.

Arkansas-Best Freight System, 450 U.S. 728, 742 (1981); *Vaca v. Sipes*, 386 U.S. at 194-195.

In the instant case, there is no evidence that the union's conduct in connection with company and state mine inspections was "arbitrary, discriminatory, or in bad faith." To the contrary, as we have discussed, the evidence is that the union chose to use its participation in the inspections largely as a means for receiving and transmitting safety complaints from employees in the various sectors of the mine visited during the inspections, rather than attempt to duplicate the expertise in mine safety that the company and state inspectors brought to the inspections. *See supra* at 4-6.

The making of such choices is the essence of the union's representative function; the particular choices made here are perfectly consistent with the duty of fair representation.

II. THE SECTION 301 ISSUE

Putting the foregoing considerations aside, and looking at plaintiffs' tort claim on its merits, that claim depends on the union having a duty to inspect. Under Idaho law, as under the common law generally, in the absence of such a duty a union, or any other person, has no obligation to discover or to report hazardous conditions on another's property. *See generally* Restatement (Second) of Torts §§ 314, 323, 324A (1965).

Until *Hechler* was decided, both plaintiffs and the Supreme Court of Idaho located the source of the union's duty to inspect in the safety article of the collective bargaining agreement.[15] After *Hechler*, as we understand

[15] *Hechler*, of course, made crystal clear both (a) that the interpretation of collective bargaining agreements is exclusively a question of federal law under § 301—"law 'which the courts must fashion from the policy of our national labor laws,'" 481 U.S. at 855, *quoting Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957);

matters, both plaintiffs and the Idaho court would locate the source of the union's duty to inspect in the union's action of accompanying company and state inspectors on inspections of the mine, and not in any contractual agreement by the union to inspect. *See supra* at 11.

We cannot state with assurance, however, that both plaintiffs and the Idaho court have given up all reliance on the claim that the union's "duty to inspect" is grounded in the contract. Out of an abundance of caution we therefore show briefly that the union did not enter into any such agreement. In doing so, we apply the principles for interpreting collective bargaining agreements that are applicable under § 301 of the LMRA. See *supra*, note 15.

The place to begin is the language of the safety article of the collective bargaining agreement—the only provision in that agreement regarding safety. We have already described the safety article in great detail, *see supra*

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and (b) that a union in a collective bargaining agreement may agree to assume duties to the employees the union represents that are in addition to the duty of fair representation that inheres in its representative status, 481 U.S. at 860-862. The existence and the scope of such a commitment by the union is, of course, like the rest of the collective agreement, to be determined according to federal law under § 301, *id.* at 862.

[16] In their post-*Hechler* brief to the Idaho Supreme Court, plaintiffs argued as follows:

> The Union's duties exist not because the Union, pursuant to the provisions of the Collective Bargaining Agreement had contracted to inspect, but because of the conduct of the Union by *in fact* inspecting the mine and the duty it owed its members to exercise due care in inspecting and reporting its findings and recommendations.
>
> * * *
>
> The *actions* of the Union establish the nature of [*sic*] scope of their duties; the *contract* does not.

Appellants' Supplemental Brief, in Idaho Supreme Court Case No. 15338, at 2, 10 (emphasis in original).

at 4-5. We repeat here only the following: The provision permitted the union to designate a representative "to accompany" the company's safety engineer on his monthly "tour of a section of the mine" and "to accompany" the state mine inspector on any state inspection of the mine (J.A. 22). The provision did not grant the union any authority to change safety practices or to correct hazards in the mine; rather, the contract only went so far as to authorize union representatives—through an evenly divided six-person joint labor-management safety committee—to submit "advices," "suggestions [and] recommendations" to the plant manager "for his consideration and for such action as he may consider consistent with the Company's responsibility to provide for the safety and health of its employees . . ." (*id.* 21-22). Indeed, under the collective bargaining agreement the union did not even have recourse to the grievance procedure on those matters unless at least one management member of the safety committee supported the union's position as to a safety recommendation that "need[ed] action immediately" (*id.* 22).

On its face, the provision reads as an agreement by the company to a limited mechanism through which the union could raise safety issues on behalf of the bargaining unit members for the company's consideration. There is no suggestion of an independent union right or duty to inspect the mine.

That this provision should be understood as a limited commitment by the company to the union, and not a commitment by the union to the bargaining unit members, is confirmed by reference to the policies and realities of our system of collective bargaining. As this Court has stated:

> In our role of developing a meaningful body of law to govern the interpretation and enforcement of collective bargaining agreements, we think special heed should be given to the context in which collective

> bargaining agreements are negotiated and the purpose which they are intended to serve. [*Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 567 (1960)].

For purposes here, the most germane consideration is the nature of the relationship between the union and the bargaining unit members. In negotiating a collective bargaining agreement, the union acts as the agent of the members of the bargaining unit. In that agency role, the union's objective is to obtain commitments from the employer that run to the benefit of the represented employees. To obtain those commitments, the union may have to make commitments *to the employer* on behalf of the represented employees—for example, a no-strike commitment. But ordinarily, there is no occasion in a collective bargaining agreement for a union to make commitments to the bargaining unit members themselves on whose very behalf the agreement is negotiated. And there is nothing here that takes this safety provision out of the mainstream and manifests a commitment by the union *to its members* to make mine inspections.

As we noted earlier in this brief, the office of "[c]ollective bargaining agreements [is to] regulate or restrict the exercise of management functions; they do not oust management from the performance of them." *Steelworkers v. Warrior & Gulf*, 363 U.S. at 583. The safety provision at issue here must be viewed in this light. The union sought to limit the company's prerogatives with respect to safety; the company yielded to the extent of providing for a limited forum for the union to bring employees' safety concerns to management's attention on an ongoing basis. That is the natural reading of the safety article, and that is the reading that results from an understanding of our system of labor relations.

Based on the same analysis, the Sixth Circuit in *Bryant v. United Mine Workers*, 467 F.2d 1, 4-5 (6th Cir. 1972), *cert. denied*, 410 U.S. 930 (1973), held that a collective bargaining agreement, which gave the union greater

power over safety matters than the agreement at issue here, was not intended to create rights enforceable against the union by employees:

> Sub-sections (a) and (b) read together give the Union the power to compel compliance; nothing in the language of those sub-sections seems to require the Union to exercise such power. Collective bargaining agreements are literally agreements between unions and employers; the Union negotiators are intent on gaining the maximum power possible from management negotiators. Whether or not they choose to exercise all the power gained depends on a variety of situations relating to the overall employment situation in the industry. It would be a mistake of vast proportion to read every power granted the union by management as creating a corollary contract right in the employee as against the union.

The application of federal principles, as § 301 requires, thus compels the conclusion that the safety article of this collective bargaining agreement did not create any contractual duty that could serve as the basis for plaintiffs' suit.

CONCLUSION

For the foregoing reasons, the decision and judgment of the Supreme Court of Idaho should be reversed.

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